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HENRY MYERS & CO. *v.* LEWIS.

June 14, 1917.

[92 S. E. 988.]

**1. Process (§ 137\*)—Return of Services—Verification—Compliance with Statute.**—A notary's affidavit attached to a return of process, stating that the person serving process made oath that return was true, sufficiently complied with Code 1904, § 3232, requiring that a return of service be made under oath.

[Ed. Note.—For other cases, see Process, Cent. Dig. §§ 177-180.\* 12 Va.-W. Va. Enc. Dig. 247.]

**2. Attachment (§ 227\*)—Motion to Dissolve—Insufficiency of Cause of Action.**—A motion to quash an attachment was properly denied, where the motion raised question of validity of plaintiff's demand, which was a matter to be determined when the case was tried upon its merits, in view of Code 1904, § 2981, providing that the court shall render final judgment upon the merits where the attachment is properly sued out.

[Ed. Note.—For other cases, see Attachment, Cent. Dig. §§ 782, 802.\* 2 Va.-W. Va. Enc. Dig. 118.]

**3. Partnership (§ 174\*)—Liability for Libel—Publication by One Partner.**—A partnership was liable for a publication of a libel by one partner in correspondence relating to partnership business, where the act was within the partner's scope of authority, the same rule applying as in the case of principal and agent, the test of liability being whether, if the act had been done in a notorious manner, the service itself in which the act was done would have been within the ordinary course of business, or within the scope of authority, and it is immaterial whether the act was in fact beneficial to the partnership.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 306.\* 9 Va.-W. Va. Enc. Dig. 265.]

**4. Trial (§ 252 (1)\*)—Refusal of Request Inapplicable to Evidence.**—It was proper to refuse to give an instruction where there was no evidence to support it.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 596, 612.\* 7 Va.-W. Va. Enc. Dig. 718.]

**5. Partnership (§ 174\*)—Liability for Libel Published by One Partner—Exemplary Damages.**—A partnership will be liable for exemplary damages in the case of a libel published by one partner and ratified by the other, under the doctrine adopted in the case of principal and agent.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 306.\* 9 Va.-W. Va. Enc. Dig. 283.]

**6. Libel and Slander (§ 124 (8)\*)—Instruction—Damages.**—In an

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

action for libel, it was error to instruct the jury as an abstract proposition, and without limitation, that if they found defendant liable they might award exemplary damages.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 297.]

**7. Appeal and Error (§ 1066\*)—Harmless Error—Instructions.**—An instruction that if jury found defendant liable they might award exemplary damages, although erroneous as an abstract proposition, was harmless in view of the evidence, where the same verdict might have been rendered.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4220; Trial, Cent. Dig. § 558.\* 1 Va.-W. Va. Enc. Dig. 600.]

**8. Appeal and Error (§ 882 (13)\*)—Invited Error—Statement of Rule of Damages in Instructions.**—Where, by a requested instruction, the court was invited to give an instruction not properly limiting damages recoverable, and the case was tried in the court below on this theory, appellants cannot avail themselves of such omission.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3603.\* 1 Va.-W. Va. Enc. Dig. 608.]

**9. Libel and Slander (§ 33\*)—Words Actionable Per Se—Necessity of Proving Special Damage.**—Where a publication is libelous per se, plaintiff may recover substantial and even punitive damages, without proof of particular instances of special damage, for the reason that in such cases the law presumes general damages.

[Ed. Note.—For other cases, see Libel and Slander, Cent. Dig. §§ 112, 277.\* 9 Va.-W. Va. Enc. Dig. 280, 283.]

**10. Libel and Slander (§ 33\*)—Admission of Evidence—Rebutting Presumption of Damage.**—In an action for publication of words libelous per se, the defendant could rebut the presumption of general damages by inquiring as to what actual damages plaintiff sustained for the purpose of diminishing the damages recoverable.

[Ed. Note.—For other cases, see Libel and Slander, Cent. Dig. §§ 112, 277.\* 9 Va.-W. Va. Enc. Dig. 279.]

**11. Appeal and Error (§ 882 (9)\*)—Right to Assign Error—Admission of Evidence.**—In action for libel, defendant could not assign error on account of court's refusal to sustain objection to an answer given in direct response to defendant's question on cross-examination.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3599.\* 1 Va.-W. Va. Enc. Dig. 592, 608.]

From Hustings Court of Richmond.

Action for libel by J. H. Lewis against Henry Myers & Co. Judgment for plaintiff, and defendant brings error. Affirmed.

*S. S. P. Patteson* and *Duval & Duval*, all of Richmond, for plaintiff in error.

*L. O. Wendenburg*, of Richmond, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.